Hen. VIII, c. 1 and 32 Hen. VIII, c. 32, the right of compulsory partition together with the right of voucher on the implied warranty was conferred on tenants in common and on joint tenants. *Bustard's Case,* 4 Co. Rep. 121a; *Morrice's Case,* 6 Co. Rep. 12b; COKE, LITTLETON, Bk. 3, Ch. 1, §§ 262-3; 2 BLACKSTONE, COM. 185, 189, 194; 4 KENT, COM. (18th ed.) p. *364, *65; *Sawyers* v. *Cator,* supra. Whether a judgment in a partition suit should work an *Walker* v. *Hall,* 15 Ohio St. 355. The principal case seems to recognize that an implied warranty exists between the tenants and their privies. As voucher on the warranty is now obsolete there is doubt as to the method of enforcing such an implied warranty. *Walker* v. *Hall,* supra; *Weiser* v. *Weiser,* supra. A bill in equity has been suggested as an appropriate remedy. *Sawyers* v. *Cator,* supra. Whether a judgment in a partition suit should work an estoppel to deny title would seem to depend on whether title was in issue. BIGELOW, ESTOP. (6th ed.) 87. At common law partition was only a possessory action and so remains where its character has not been changed by statute. *Kennedy* v. *Rainey,* 145 Ala. 572; *Pierce* v. *Oliver,* 13 Mass. 211; *Nash* v. *Cutler,* 16 Pick. (Mass.) 491; *Finley* v. *Cathcart,* 149 Ind. 470. When under modern statutes the title is put in issue the judgment thereon should operate by way of estoppel. FREEMAN, COTEN. & PART., § 531; *Turpin* v. *Dennis,* 139 Ill. 274; *Wright* v. *Dunning,* 46 Ill. 271; *Dutch's Appeal,* 57 Pa. St. 461.

RAILROADS—LIABILITY TO TRESPASSERS AND LICENSEES.—X was killed by defendant's locomotive while on a bridge on which defendant had posted a notice as follows: "Warning: No Thoroughfare. No persons allowed on this bridge except employees." The evidence showed the train was backing down the track without any headlight on its tender and neither blowing any whistle nor ringing a bell as a warning at the time of the accident. It further appeared that the bridge had for years been used by the public as a thoroughfare and that the railroad company knew of the use. In an action by X's administratrix, a directed verdict for defendant was given on the ground that "Defendant having put up signs warning people to keep off the track, had done its full duty to the public." *Held* that, as the deceased was a willful trespasser, the company owed him no duty and no recovery should be allowed. *Newell* v. *Detroit, G. H. & M. R. Co.* (Mich. 1915), 153 N. W. 1077.

Practically all authorities unite in holding that the only duty owing to a willful trespasser is not to injure him willfully or wantonly or by negligence so gross as to amount to wantonness. *Georgia R. Co.* v. *Fuller,* 6 Ga. App. 454, 65 S. E. 313; *Bartlett* v. *Wabash R. Co.,* 220 Ill. 163, 77 N. E. 96 (affirming 116 Ill. App. 67); *Wright* v. *Boston R. Co.,* 142 Mass. 296, 7 N. E. 866; *Grand Trunk R. Co.* v. *Flagg,* 156 Fed. 359; *Jeffersonville R. Co.* v. *Gold-Smith,* 47 Ind. 43, 8 Am. Ry. Rep. 315; *Trudell* v. *Grand Trunk R. Co.,* 126 Mich. 73; *Verner* v. *Alabama Ry. Co.,* 103 Ala. 574. However there is a line of cases holding that plaintiff can recover for injury sustained through the negligence of the defendant, *even though he is a trespasser,* if the defendant knew of the public use of such right of way, and had never objected. *Texas*

& P. R. Co. v. *Barrett,* 23 Tex. Civ. App. 545, 57 S. W. 602; *Jackson* v. *Kansas City, Ft. S. & M. R. Co.,* 157 Mo. 621, 58 S. W. 32, 80 Am. St. Rep. 650; *L. & N. R. Co.* v. *Daniel,* 122 Ky. 256, 91 S. W. 691. The theory of these cases is that the acquiescence of the railway company makes plaintiff a licensee. The principal case holds that by posting notices the company shows that it does not acquiesce in the use of the highway by the public, so that each use is a trespass, and continued trespasses can never raise an implied license. *Winnie* v. *Lake Shore & M. S. Ry. Co.,* 160 Mich. 334, 125 N. W. 351; *Toomey* v. *Southern etc. R. Co.,* 86 Cal. 374, 10 L. R. A. 139; *Hamlin* v. *Col. etc. R. Co.,* 37 Wash. 448, 79 Pac. 991. Contra, holding that merely posting notices does not relieve company of duty to exercise care where they know public are accustomed to use tracks. *Missouri etc. Ry. Co.* v. *Sharp* (Texas Civ. App. 1909), 120 S. W. 263; *Gulf etc. Ry. Co.* v. *Cohen* (Texas Civ. App. 1910), 126 S. W. 916. Other authorities hold that a railway company rests under the obligation to use reasonable care to prevent injury to persons on the track at places where they have reason to anticipate the presence of persons thereon. *Southern R. Co.* v. *Smith,* 163 Ala. 174; *Anderson* v. *Great Nor. R. Co.,* 15 Idaho 513, 99 Pac. 91; *Louisville etc. R. Co.* v. *Miller,* 134 Ky. 716, 121 S. W. 648; *Eggstein* v. *Mo. Pac. R. Co.,* 197 Mo. 720, 94 S. W. 967. A case in the same jurisdiction as the principal case (*Huggett* v. *Erb,* 182 Mich. 524, 148 N. W. 805), decided in 1914 and involving similar facts, after holding the plaintiff to be a trespasser says, "The question of the extent to which defendant's track was traveled at the place of the accident, defendant's knowledge of such use, the degree of care required in managing trains in that locality * * * should have been submitted to the jury." This case, it is true, was in regard to a child but the reasoning would apply to adults as well and it would seem that under the circumstances of the principal case the rule in *Huggett* v. *Erb,* supra, would have been the better one to apply. See also 11 MICH. L. REV. 84.

SALES—BARTER AND EXCHANGE OR SALE.—Plaintiff agreed in writing to convey certain land to defendant for a consideration of $9,600, agreeing to take in payment therefor a specific stock of merchandise and fixtures. The agreement further provided that "Should the stock and fixtures not amount to the $9,600.00 the party of the first part hereby agrees to take groceries in amount to make up the $9,600.00; said groceries now located in" a building in W., and to be taken at their invoiced wholesale value. The stock and groceries not in fact amounting to $9,600.00, on suit brought to recover the difference, the vendee claimed the right to make it up with other groceries or their actual value in money, alleging that their actual money value would be less than their invoiced value. *Held,* the transaction was a sale, not a barter and exchange, and therefore the defendant must make up the difference in cash, instead of substituting another stock of groceries or their actual, as distinct from their invoiced, value. *Brunsvold* v. *Medgorden* (Iowa 1915), 153 N. W. 163.

A first glimpse this case appears to be an addition to those very few which involve a distinction between sales and exchanges, and it has been so treated